IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

MFA.No. 1126 of 2001(C)

OPMV.872/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
.....

APPELLANT: 6TH RESPONDENT IN OP.(MV) NO.872/94.

THE NEW INDIA ASSURANCE COMPANY LTD.,
BRANCH OFFICE, KALPETTA P.O.,
VYTHIRI TALUK, REP.BY ITS ASSISTANT
ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.LAL GEORGE
SRI.R.PRAVEEN

RESPONDENTS: PETITIONER AND RESPONDENTS 1,2,3,4,5 & 7
---------- IN OP(MV) NO.872/94.

1. **K.MOIDEENKUTTY, S/O.MOIDEEN,**
AGED 48 YEARS, KUTTIKADAN HOUSE,
KALPETTA P.O. KALPETTA AMSOM,
AMBILERI DESOM OF VYTHIRI TALUK,
(CLAIMANT IN THE ORIGINAL PETITION)

2. **ABDUL NAZER, AGE NOT KNOWN, S/O.HAMSA,**
AMMINJADA VEEDU, AYIRAMKOLLY,
AMBALAVAYAL P.O.,
AMBALAVAYAL AMSOM DESOM OF BATHERY TALUK,
(DRIVER OF KL-12/3664 NO.JEEP.

3. **SMT.SARAMA SINGH, W/O.JEGINDER SINGH,**
GRACE VILLA, AMBALAVAYAL P.O.,
MANJAPPARA, S.BATTERY TALUK,
(OWNER OF KL-12/3664 NO.JEEP.

**4. UNITED INDIA INSURANCE CO.LTD.,
BRANCH OFFICE CALICUT, AMSOM DESOM
NOT KNOWN, P.L.NO NOT KNOWN
(INSURER OF KL-12/3664 NO.JEEP.**

***5. MOHANDAS, AGED 29 YEARS, S/O.KRISHNAN,
CHANDAKUNNIL VEEDU, MEPPADI P.O. ARAPETTA,
VYTHIRI TALUK,
(DRIVER OF KL-12 /2929 NO.AUTORIKSHAW) (DELETED)**

**6. K.HUSSAIN, S/O.MARAKKAR, AGE NOT KNOWN,
KOLAKKATTIL HOUSE,
P.O. AMBALAVAYAL, S.BATTERY TALUK,
(OWNER OF KL-12/2929 NO.AUTORIKSHAW)**

*** THE RESPONDENT NO 5 IS DELETED FROM THE PARTY ARRAY, AT THE RISK OF THE APPELLANT, VIDE ORDER DT. 5.12.01 ON CMP. NO.7994/2001.**

**BY ADV. SRI.MATHEWS J.NEDUMPARA
SRI.SREELAL WARRIAR**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.1126/2001

ORDER ON CMP. NO.7994/2001 IN MFA. 1126/2001

DISMISSED

24.07.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.P.BALACHANDRAN , JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1126 OF 2001 ()

Dated this the 24th day of July, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the Insurance company against the award of the Motor Accidents Claims Tribunal, Kalpetta. The dispute is only regarding the quantum of compensation. Admittedly, no permission under Section 170 of the Motor Vehicles Act was obtained for contesting the case on merits. Apex Court in ***National Insurance Co. Ltd. v. Nicolletta Rohtagi and others (JT 2002 (7) SC 251)*** held that Insurance company cannot file an appeal questioning the award passed by the tribunal on merits, in the absence of permission under Section 170 of the MV Act and it can take only the defences mentioned in Section 149 (2) of the Act. Hence Insurance company cannot question the quantum of

compensation. In the above circumstances, this appeal is not maintainable and hence dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1126 OF 2001 ()

J U D G M E N T

24th July, 2007